



Introduction to Ecology's new shoreline master program guidelines

On November 29, 2000 Ecology adopted new shoreline master program guidelines (*Chapter 173-26 WAC*). With his signature, Ecology Director Tom Fitzsimmons concluded a five-year effort to review and update the state rule.

The guidelines provide details on how local governments can achieve the level of protection required by the Shoreline Management Act (SMA).

The new guidelines will limit the amount of development allowed adjacent to streams, lakes and marine waters in Washington state. In the future, new structures or activities that are not "water dependent" will have to occur farther back from the edge of those water bodies, partly to protect the quality and natural functions of the shoreline, but also to protect people and businesses from flooding and erosion.

Natural vegetation along shorelines also will need to be preserved to help prevent erosion and to provide habitat for aquatic life such as endangered salmon.

Bulkheads, docks and other shoreline structures that harm the natural functions of shorelines will be discouraged. Bulkheads, in particular, are a problem because they deflect wave energy and increase erosion on neighboring properties. In the future, property owners will have to consider environment-friendly alternatives for stabilizing shorelines.

The revised shoreline guidelines apply only to new development or re-development. They do not apply to existing homes, businesses or farming practices, nor to shoreline projects that have already been approved for development by cities and counties under their existing shoreline master programs.

Background

The Shoreline Management Act (SMA) requires local governments to write "shoreline master programs" that regulate streams, lakes over 20 acres, and marine waterfronts. The 247 city and county master programs currently in effect were written based on state guidelines (*Chapter 173-16 WAC*) that

have not changed since 1972.

In 1995, the state legislature directed Ecology to review and update the state guidelines every five years. After meetings with a series of advisory committees and producing a number of informal drafts, Ecology formally proposed a rule in April 1999. During a public-review period that included 9 hearings across the state, more than 2,500 people commented on the draft.

After reviewing the public comments, Ecology determined that substantial changes were needed. Under state law, if an agency decides to make substantial edits to a proposed rule, it must start the official public comment process from scratch.

Ecology withdrew the rule in October 1999, worked with interested groups on changes, and sought review of a revised "informal" draft rule from December 1999 through February 2000.

Ecology commenced a second formal 60-day public review period for a final draft rule on June 7, 2000. Eight hearings were held across the state. Ecology received more than 2,000 comment letters during the comment

period. Ecology has prepared a summary of all comments with Ecology's response (*see back page for how to order the summary*).

Two-path approach

A key feature of the final guidelines is a two-path approach that gives cities and counties a choice in how they write and implement their shoreline master programs. The default "Path A" allows local governments flexibility and creativity in how they meet the standards of the SMA, while the optional "Path B" contains specific measures for protecting shoreline functions.

The National Marine Fisheries Service and the U.S. Fish & Wildlife Service have agreed that any local master program that complies with Path B will automatically get an exception under the Endangered Species Act (ESA). This will shield cities and counties from federal penalties and citizen lawsuits if an ESA-listed fish is harmed or its habitat disturbed as the result of an activity covered by the exception.



Ecology's shoreline guidelines require local governments to inventory shorelines and establish measures to protect and restore ecological functions.

Protecting ecological functions

At the heart of both paths of the proposed rule is a requirement that local officials identify the "ecological functions" performed by shorelines and protect them based on what the local environment needs.

Path A allows local governments to comply with this requirement through a variety of means. For example, a local government might analyze a stream to determine key stretches where riverbanks absorb floodwaters and prevent flood damage downstream. They could then use buffer requirements or wetlands protection provisions to prevent inappropriate development in those areas.

Path B of the rule is more detailed in its requirements for protecting ecological functions. It requires local governments to protect and restore "properly functioning conditions" (or PFC) for ESA-listed fish populations.

The term PFC was coined by federal agencies to describe the level of specific functions that are necessary for the recovery of Threatened and Endangered species. The conditions that species need varies with the type of shoreline.

For example, the conditions a salmon needs to survive in marine waters may be different than what it needs to spawn in a stream. Path B explains PFC and describes an analytical process that local governments may use to ensure that PFC is maintained where it exists, and is restored over time where it has been degraded. The Path B approach includes a default vegetative buffer width (*see below*).

Protecting shoreline vegetation

Both paths in the rule require local governments to protect shoreline plants that keep banks from eroding, shade the water, and create habitat for fish. Path A allows local governments to use a variety of means, such as clearing and grading standards or setback and buffer standards, to protect vegetation.

The Path B approach sets a default buffer of one "site-potential tree height" (the maximum height that a tree potentially could grow at a particular site) along **rivers** where trees naturally grow. The default buffer is 60 feet along rivers where trees don't grow, such as in arid areas of the state.

The rule also sets a buffer of one-half "site-potential tree height," or 100 feet (whichever is greater) along **lakes** and

marine shorelines. These standards are based on studies that document the contribution that vegetation makes to shoreline functions.

The buffers, or vegetation conservation areas, are not "no-touch" areas. The guidelines do allow some development within them in specific situations. For example, development would be allowed on an existing legal residential lot where it is not feasible to locate the primary structure outside the buffer, or when ecological functions are not diminished. The removal of noxious weeds and the limbing of trees are also allowed.

Bulkhead provisions

Under the new guidelines, local master programs need to establish stricter measures to slow the spread of bulkheads and other "hard" shoreline armoring.

Scientists have found that these structures degrade fish and wildlife habitat and can accelerate erosion on neighboring properties.

Both paths of the rule require that applicants demonstrate a need for new bulkheads and other shoreline armoring before getting approval. The rule also

Requirements for restoration linked to new development

One of the most widely misunderstood concepts in the shoreline rule is "restoration." Both Path A and Path B establish the objective of restoring ecological functions on a comprehensive basis (e.g., within a river basin) over time as new development occurs.

Restoration is defined as "the significant upgrading of shoreline ecological functions through measures such as revegetation, removal of intrusive shoreline structures and removal of toxic materials."

Restoration does not mean returning an area to pristine conditions. In both paths, restoration requirements do not apply retroactively to existing uses. Most restoration requirements arising from the guidelines will result from permit conditions for certain types of development on previously degraded sites. The guidelines do not require that all projects include ecological restoration. Local governments pursuing Path B must develop a "restoration strategy" for integrating different

restoration approaches (inventory of shoreline areas ripe for restoration, limiting

factors analysis, etc.) to eventually attain PFC.



Local governments can meet the restoration requirements of the new rule by ensuring that new projects contribute to improvements in the overall shoreline ecosystem. For example, the stabilization project above included placement of large woody debris that helped solve the landowner's erosion problem while improving shoreline habitat.

requires that environment-friendly erosion control methods be used as a first priority.

The rule clarifies that repairing and maintaining existing bulkheads is allowed under either path. However, both paths do set new requirements for replacing bulkheads. Path B requires a geotechnical report showing the bulkhead needs to be replaced before getting approval.

Docks and piers

Both paths require that new docks and piers be built to reduce harm to the shoreline environment. Also, piers and docks must be restricted to the minimum size needed for the proposed use, and property owners are encouraged to share piers and docks among several neighbors to reduce the spread of individual structures.

Agricultural lands

Both paths of the rule require that local governments develop standards to prevent harm to shorelines from new agricultural uses. This requirement does not apply to changes from one crop to another.

Both paths of the rule clarify that the guidelines do not apply retroactively to existing and ongoing agricultural activities.

Improving local inventories

A key step in protecting ecological functions is conducting an inventory of shoreline conditions. Most local governments conducted inventories of their shorelines in the mid-1970s, when they adopted their first master programs. Most of those inventories have never been updated.

Both paths of the rule describe new minimum requirements for baseline inventory and analysis. Path A requires local governments to use existing information such as critical area inventories as a basis for analysis. Path B sets more-detailed inventory requirements. Ecology will help coordinate inventory work to the extent possible.

Environment designations

The guidelines give local governments new directions for setting environment designations.

These designations are similar to zoning overlays for shoreline areas. Designations such as "natural," "rural-conservancy," or "high-intensity" are applied to shorelines based on land-use patterns and the character of existing natural resources. Each designa-

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Cumulative impacts

The original 1972 shoreline rules were written at a time when the greatest threats to shoreline health were large dredging and filling projects. Today, our shorelines are suffering instead from the cumulative harm caused by many small degradations, or what some call "the death by a thousand cuts."

Because of this, both Path A and Path B require local governments to analyze the full build-out impacts for development allowed under their master programs.

The requirement under Path A is flexible, while Path B provides a specific list of types of impacts to be addressed and requires planning for the highest impact scenario and preparation of shoreline regulations that should result in no significant loss of PFC at full build-out.

Monitoring

One of the reasons cumulative impacts have not been addressed in the past is that state and local governments have not systematically assessed the consequences of shoreline development over time.

Both Path A and Path B require local governments to maintain records of project review actions in shoreline areas. Path B requires Ecology together with participating local governments to conduct 100 site inspections and report on development. This effort will evaluate the level of compliance and identify needed changes to the guidelines at least once every five years.



Ecology's new shoreline rules direct local governments to require that new developments are set back sufficiently to ensure bulkheads aren't needed to protect the structure.

Channel Migration Zones

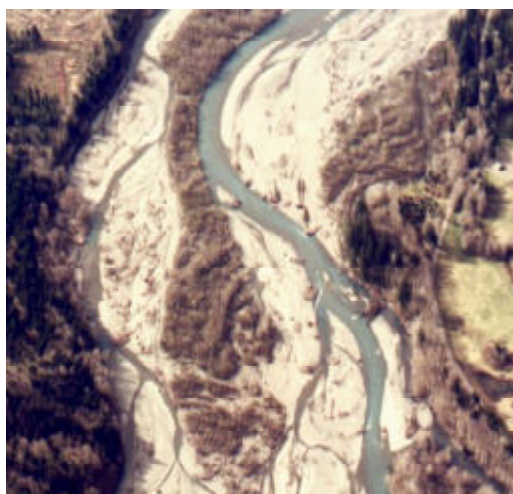
Both paths of the new rule add new requirements for local governments to manage river "channel migration zones" or CMZs.

The CMZ is the area where rivers naturally meander over time. They are not only hazardous areas to build, but fish and wildlife also depend on the habitat created when a river is allowed to migrate.

Borrowing from recently adopted forestry rules, the guidelines define the CMZ as the area along rivers where there has been evidence of channel movement over the past 100 years, excluding urban areas that have been separated from the active channel by dikes.

The rule restricts new structural flood control measures and most new developments within that portion of the

CMZ that lies within shoreline jurisdiction. The guidelines include specific exceptions to these restrictions, such as restoration projects, forest practices, and utilities and transportation where no alternatives exist.



tion has its own management policies and regulations.

The designations in both paths are more expansive than the original 1972 guidelines, with more-detailed requirements. For example, under the rule, many undeveloped shorelines will fall into either "natural" or "rural-conservancy" classifications that emphasize preserving existing ecological functions. Urban shorelines will typically emphasize avoiding further degradation while focusing on restoring natural functions.

If a local government's existing environment designations are consistent with the intent of the new guidelines, they need not be changed.

Preferred use requirements

One of the central policies of Washington's Shoreline Management Act is that shorelines should be reserved for uses that truly depend on a waterfront location, or uses that provide opportunities for the public to enjoy the shoreline. The guidelines are more explicit than current rules in how to set priorities for these preferred uses. The rule defines three distinct kinds of uses, giving priority to "water dependent" uses over "water related" and "water enjoyment" uses.

Integration with growth management plans

One of the main goals of the rule is to make it easier for local governments to integrate shoreline programs with local Growth Management plans and regulations. A state law passed in 1995 (ESHB 1724) mandated that local shoreline programs be considered part of local plans.

The rule would give local governments flexibility in how they integrate shoreline policies and regulations with local comprehensive plans and development regulations.

For example, the guidelines discuss various methods for including shoreline policies within local comprehensive plans and methods to avoid duplication between the shoreline master program and the local critical-areas ordinance.

The guidelines make it clear that a local government's administrative provisions need not be a part of the master program. This lets local governments change their permit-review procedures without amending their master programs. The guidelines also provide more specific direction regarding shoreline conditional-use-permit provisions.

Enforcement

Both Path A and Path B rely on current enforcement provisions included in WAC 173-27 for shoreline permits. The Services will require a monitoring and permit enforcement program for ESA compliance. Path B adds the requirement for participating local governments to establish a local enforcement program for all shoreline development that includes final inspections and/or bonding requirements or expressed enforcement conditions.

Clarifying state interest

The Shoreline Management Act sets out broad policies defining the state interest in shorelines. Ecology must look to these policies when reviewing changes to local shoreline programs. The rule gives more explicit guidance to local governments on how to meet the key policies of the Shoreline Act, including policies on public access, water quality, aquaculture, port and industrial development, and reducing flood damage.

This guidance will help local governments resolve conflicts over allowable uses on shorelines.

Governor seeks time, money

Local governments are very concerned that the Legislature has not appropriated new funds to help them update their local master programs to be consistent with the new state guidelines. The SMA currently requires local governments to update their local master programs within the next two years.

Ecology and Governor Locke will continue to support funding and a time extension in the coming legislative session.

For more information

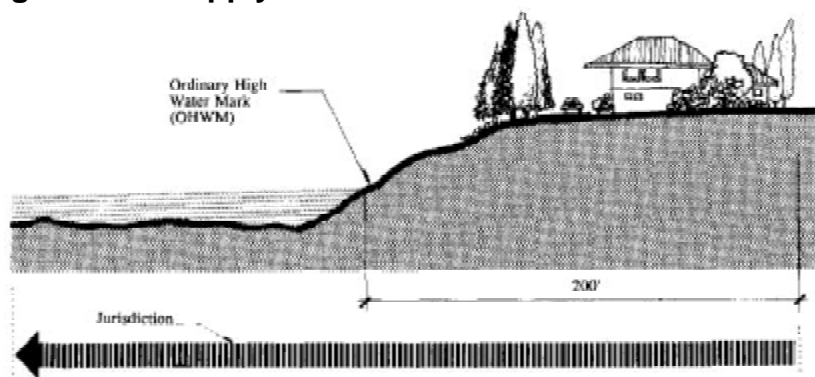
Ecology's has produced a "Responsiveness Summary" that addresses all comments received during a 60-day public review period held during the summer of 2000.

Copies of this and other documents are available on Ecology's Web site at www.ecy.wa.gov/programs/sea/SMA/guidelines/newguid.htm.

For paper copies of the rule or other documents, contact Ecology:

- Send an e-mail to shorerule@ecy.wa.gov
- Call 1-888-211-3641 and leave a message
- Send a request to:
Shoreline Guidelines
Washington Department of Ecology
PO Box 47690
Olympia, WA 98504-7690

Where does the Shoreline Management Act apply?



The Shoreline Act applies to more than 20,000 miles of shorelines. This includes 2,300 miles of lake shores, 16,000 miles of streams, and 2,400 miles of marine shores.

Shorelines are defined by law as:

- all **marine waters**;
- **streams** with a mean annual flow greater than 20 cubic feet per second;
- **lakes** 20 acres or larger;
- Upland areas called "**shorelands**" 200 feet landward from the edge of these waters;

and the following areas when they are *associated* with one of the above:

- **wetlands** and river deltas; and
- local governments have the option of including the **100-year floodplain** including all wetlands within the entire floodplain.

Note that the area under shoreline jurisdiction is simply the area that is regulated as defined by state law, it is not a setback or buffer zone.